

Ja3dbrip

Plea

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 0036 (JPO)

5 DAVID BRITT,

6 Defendant.

7 -----x

8
9 October 3, 2019
2:36 p.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 BY: JORDAN LANCASTER ESTES

MARGARET GRAHAM

17 MARTIN BELL

Assistant United States Attorneys

18
19 ORRICK, HERRINGTON & SUTCLIFFE, LLP

Attorneys for Defendant David Britt

20 BY: ROBERT M. STERN

- and -

21 SEWARD & KISSEL LLP

22 BY: RITA MARIE GLAVIN

Ja3dbrip

Plea

1 THE CLERK: This is in the matter of the United States
2 of America against David Britt.

3 Starting with the government, counsel please state
4 your name for the record.

5 MS. ESTES: Good afternoon, your Honor. Jordan Estes,
6 Margaret Graham and Martin Bell for the government.

7 THE COURT: Good afternoon.

8 MR. STERN: Good afternoon, your Honor. Robert Stern,
9 with Orrick, Herrington & Sutcliffe, for Mr. Britt, with Rita
10 Glavin of Seward & Kissel.

11 THE COURT: Good afternoon.

12 MR. STERN: Thank you, your Honor.

13 THE COURT: Mr. Britt, I have been informed that you
14 wish to plead guilty to Count Two of the Indictment, conspiracy
15 to commit wire fraud. Is that correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If you would pull the -- you don't have to
18 stand up.

19 MR. STERN: Your Honor, if I may just for one second?

20 THE COURT: Yep.

21 MR. STERN: Following the Court's decision on
22 September 9th denying Mr. Middendorf and Mr. Wada's post-trial
23 motions, we have had an opportunity to review with Mr. Britt
24 the developments in this case since his arraignment. We have
25 gone back through with him the Court's decision denying his

Ja3dbrip

Plea

1 motion to dismiss. We've gone back over the jury instructions
2 the Court had provided in the United States v. Middendorf and
3 Wada trial. And we went through with him the most recent
4 motion -- most recent decision denying the post-trial motions.
5 And in light of those recent developments, along with the very
6 unique circumstances that could flow to Mr. Britt resulting
7 from a conviction at trial, he would like to change his plea.

8 THE COURT: OK. And that's pursuant to a plea
9 agreement with the government, is that correct?

10 MR. STERN: It is, your Honor.

11 THE COURT: All right.

12 So, Mr. Britt, I have been informed that you wish to
13 plead guilty, as your counsel has stated, to Count Two; is that
14 correct?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Before accepting your plea, I am going to
17 ask you a number of questions, and the purpose for that is so
18 that I can establish that you wish to plead guilty because you
19 are in fact guilty of this charge and not for some other
20 reason. If you do not understand any of my questions or if you
21 would like to take a break to speak with your counsel at any
22 point, just let me know.

23 Please place the defendant under oath.

24 THE CLERK: Mr. Britt, will you please stand and raise
25 your right hand.

Ja3dbrip

Plea

1 (The defendant was sworn)

2 THE COURT: Mr. Britt, you are now under oath, and
3 that means if you answer any of my questions falsely, your
4 answers could be used in a prosecution for perjury. Do you
5 understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And what is your full name?

8 THE DEFENDANT: David Charles Britt.

9 THE COURT: And how old are you, sir?

10 THE DEFENDANT: I'm 56.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: I went to university.

13 THE COURT: And where was that?

14 THE DEFENDANT: In Sidney, Australia.

15 THE COURT: And have you ever been treated or
16 hospitalized for any mental illness?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: And have you recently been or are you now
19 under the care of a psychiatrist or a doctor?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Have you ever been hospitalized or treated
22 for addiction to drugs or alcohol?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: And in the past 24 hours, have you taken
25 any drugs, medicine, or had any alcohol?

Ja3dbrip

Plea

1 THE DEFENDANT: No, your Honor.

2 THE COURT: And is your mind clear today?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And as far as you understand, have you had
5 a sufficient opportunity to talk to your lawyers about the
6 purpose of this proceeding?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Does either counsel have any doubt as to
9 the defendant's competence to plead at this time?

10 MS. ESTES: No, your Honor.

11 MR. STERN: No, your Honor.

12 THE COURT: Based on his responses to my questions and
13 his demeanor as I observe it, I find that the defendant is
14 competent to enter a plea of guilty at this time.

15 Mr. Britt, have you had a sufficient opportunity to
16 discuss your case with your lawyers, including the specific
17 charge you intend to plead guilty to, any possible defenses,
18 and the consequences of pleading guilty?

19 THE DEFENDANT: Yes, your Honor, I have.

20 THE COURT: And are you satisfied with your attorneys'
21 representation of you?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: I am now going to explain certain
24 constitutional rights that you have. You give up these rights
25 when you plead guilty, so I just want to make sure that you

Ja3dbrip

Plea

1 understand them.

2 Under the Constitution and laws of the United States,
3 you are entitled to a speedy and public trial by a jury on the
4 charges in the Indictment. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: At that trial you would be presumed
7 innocent, and the government would be required to prove you
8 guilty by competent evidence and beyond a reasonable doubt
9 before you could be found guilty. You would not have the
10 burden of proving that you were innocent, but a jury of twelve
11 people would have to agree unanimously that you were guilty in
12 order for you to be convicted at trial.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: At that trial and at every stage of your
16 case, you would be entitled to be represented by an attorney,
17 and if you could not afford one, one would be appointed to
18 represent you. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: During a trial the witnesses for the
21 government would have to come to court and testify in your
22 presence, and your lawyer could cross-examine the witnesses for
23 the government, object to evidence offered by the government,
24 and, if you desired, issue subpoenas, offer evidence, and
25 compel witnesses to testify on your behalf. Do you understand

Ja3dbrip

Plea

1 that?

2 THE DEFENDANT: Yes, I do, your Honor.

3 THE COURT: At a trial, although you would have the
4 right to testify if you chose to, you would also have the right
5 not to testify, and no inference or suggestion of guilt could
6 be drawn from the fact that you did not testify, if that is
7 what you chose. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Also, if you were convicted at a trial,
10 you would have the right to appeal that verdict to the Court of
11 Appeals. Do you understand?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Even at this time as you are entering this
14 plea, you do have the right to continue to plead not guilty and
15 have a trial. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And if you plead guilty and I accept your
18 plea, you will be giving up your right to a trial and the other
19 rights I have just described. There will be no trial, but I
20 will enter a judgment of guilty on this count and then sentence
21 you later on the basis of that guilty plea, which becomes a
22 conviction. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And if you plead guilty, you will have to
25 give up your right not to incriminate yourself because I will

Ja3dbrip

Plea

1 ask you about what you did to satisfy myself that you are in
2 fact guilty. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You previously received a copy of the
5 Indictment containing the charges against you?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: And you understand the nature of the
8 charges?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: I will ask counsel for the government if
11 you would please state the elements of the offense in Count
12 Two?

13 MS. ESTES: Yes, your Honor.

14 So for consistency sake, we will use the elements from
15 your Honor's jury instructions, noting that we had initially
16 objected to "globally" being included as an element, and we
17 would in connection with the prior trial preserve any
18 objections in that regard now.

19 So there are two elements to Count Two: First, that
20 the conspiracy charged in Count Two of the Indictment existed,
21 that is, there was an agreement or understanding to commit the
22 unlawful object of the charged conspiracy; and, second, that
23 the defendant knowingly and willfully became a member of that
24 alleged conspiracy during the applicable time period.

25 Now, as to the underlying elements of wire fraud,

Ja3dbrip

Plea

1 those are: First, that there was a scheme or artifice to
2 defraud or to obtain money or property by false or fraudulent
3 pretenses, representations, or promises; second, that the
4 defendant knowingly and willfully participated in the scheme or
5 artifice to defraud with knowledge of its fraudulent nature and
6 with specific intent to defraud; third, that in execution of
7 that scheme the defendant used or caused the use of interstate
8 wires; and, finally, that any false or fraudulent
9 representation related to a material fact or matter.

10 THE COURT: Thank you.

11 I also want to explain the penalty under the law.
12 First of all, under the statute, the maximum possible penalty
13 on this count is 20 years' imprisonment. There is a maximum
14 fine of the greatest of \$250,000 or twice the total monetary
15 loss from the offense or twice the monetary gain to you from
16 the offense. And there is a \$100 special assessment, which is
17 mandatory, and a maximum term of supervise release of three
18 years.

19 Supervised release means that you are subject to
20 monitoring when you are released from any term of
21 incarceration. And there are terms and conditions of
22 supervised release that you must comply with, and if you fail
23 to comply with them, you can be returned to prison without a
24 jury trial.

25 Also, do you understand that the Court will order you

Ja3dbrip

Plea

1 to make restitution to the PCAOB in an amount the Court will
2 determine?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a United States citizen?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: OK. Have you had a chance to talk to your
7 lawyers about any immigration consequences?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. Is there anything -- are there
10 any issues that I need to question the defendant about with
11 respect to that?

12 MS. ESTES: Yes, your Honor.

13 We would ask -- and your Honor can do this now or in
14 connection with the plea agreement later, but that the
15 defendant be allocuted on the paragraph of the plea agreement
16 on page 4, where he acknowledges that it is likely that he
17 could be removed from the United States given his guilty plea.

18 THE COURT: You understand that a conviction of a
19 felony such as this can have an effect on -- can have
20 immigration consequences, in particular, it would make it
21 likely that you would be removed from the United States?

22 THE DEFENDANT: Yes. Yes, I do, your Honor.

23 THE COURT: OK.

24 MS. ESTES: And, your Honor, one other part of that:
25 We would ask that your Honor allocute the defendant on his

Ja3dbrip

Plea

1 agreement in the plea agreement that he waives his right to
2 withdraw his guilty plea based on any actual or adverse
3 immigration consequences that come later.

4 THE COURT: OK. You understand that under the
5 agreement, you are voluntarily waiving your right to withdraw
6 your plea based on any adverse immigration consequences?

7 THE DEFENDANT: Yes, your Honor, I do.

8 THE COURT: OK. If your attorney or anyone has
9 attempted to predict or tell you what your sentence is likely
10 to be, I want to explain that I am the one who is going to
11 determine your sentence. I am not doing that now, but I'll do
12 that in a few months, after considering any written submissions
13 from the parties as well as a presentence report that the
14 Probation Department will prepare and then can consider the
15 Sentencing Guidelines as well as any possible variances or
16 departures from those and then ultimately consider what an
17 appropriate sentence is for you under the statute, 18 U.S.C.
18 Section 3553(a). Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And even if your sentence is different
21 from what anyone had told you or what you expect, you will
22 still be bound by your guilty plea and will not be allowed to
23 withdraw that plea. Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Has anyone threatened you or forced you to

Ja3dbrip

Plea

1 plead guilty?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: And did you sign this plea agreement
4 today?

5 THE DEFENDANT: Yes, I did.

6 THE COURT: Before you signed it, did you have a
7 chance to read it completely?

8 THE DEFENDANT: Yes, I did, your Honor.

9 THE COURT: And you discussed it with your lawyers?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: Do you feel you understand everything that
12 is in the agreement?

13 THE DEFENDANT: Yes, I do, your Honor.

14 THE COURT: And is there any side agreement or any
15 separate understanding or agreement you have with the
16 government that has been left out of this?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: OK. Under the agreement there is what's
19 called a stipulated guideline range, which is 27 to 33 months'
20 imprisonment, and a guideline fine range of \$10,000 to
21 \$100,000. That stipulated guideline range is binding on the
22 government and on you because this is an agreement, but it is
23 not binding on me and I will make my own calculation of the
24 guidelines.

25 You do have the right, through your lawyers, to ask

Ja3dbrip

Plea

1 for a sentence that is outside that guideline range. There is
2 no mandatory minimum under the statute of this case. But you
3 are giving up your right to appeal or challenge your sentence
4 as long as I sentence you to 33 months or less in prison. That
5 is within or below the guideline range.

6 Do you understand that?

7 THE DEFENDANT: Yes, I do, your Honor.

8 THE COURT: OK. So having gone through this colloquy,
9 do you still wish to plead guilty pursuant to this agreement?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Would you please tell me in your own words
12 what you did that makes you believe you are guilty of Count
13 Two.

14 THE DEFENDANT: Yes.

15 In or about 2016, while working in Manhattan, Brian
16 Sweet told me that he received information concerning which of
17 our accounting firm's clients were going to be inspected by the
18 PCAOB as part of their annual inspection process. Mr. Sweet
19 said that the information came from another person at the
20 PCAOB. And while I was suspicious that he could obtain this
21 kind of information, I did not press him about the source and
22 propriety of possessing or using the information.

23 Specifically in March of 2016, Mr. Sweet, my superiors
24 and I agreed to devote resources to reviewing the audit
25 workpapers to those clients identified. We did this by

Ja3dbrip

Plea

1 arranging by email and telephone calls for Mr. Sweet and others
2 to gain access to the workpapers. This was done to facilitate
3 a review of the audit workpapers with the intention of ensuring
4 the documentation's accuracy in the event that those clients
5 were ultimately inspected by the PCAOB.

6 I also participated in additional discussions about
7 similar information in 2017.

8 I understood at that time that possessing and using
9 this kind of information presented significant headline and
10 reputational issues for myself and my firm because the conduct
11 was unethical and in that sense wrong. I never believed,
12 however, that my conduct was unlawful. I never asked or
13 encouraged Mr. Sweet to get information from the PCAOB, nor was
14 I privy to his plans to retain this information. Nevertheless,
15 Mr. Sweet, my superiors and I did use the information after
16 Mr. Sweet obtained it.

17 I should never have done that. I should have raised
18 my hand higher, sooner, and sooner than February 2017. In
19 fact, I should have raised my hand as high as necessary in
20 2016.

21 This episode is not how I have lived my professional
22 and personal life over the past 30 years. I am disappointed in
23 myself, and I apologize to my wife and children, family, KPMG,
24 and my former colleagues, and anyone else that has been hurt by
25 my actions.

Ja3dbrip

Plea

1 THE COURT: I would like to ask counsel for the
2 government if you believe there is a sufficient factual basis
3 for a guilty plea?

4 MS. ESTES: Your Honor, I'm not sure if this was
5 clear. I would ask that the Court allocute the defendant on
6 whether he knew this was confidential PCAOB information.

7 THE COURT: OK. Did you know in 2016, in 2017 that
8 the information you are referring to that was used was
9 confidential PCAOB information?

10 MR. STERN: Your Honor, may we have a moment?

11 THE COURT: Yes.

12 (Pause)

13 MR. STERN: Thank you, your Honor.

14 THE DEFENDANT: Mr. Sweet told me that the information
15 came from someone at the PCAOB. If that information had proved
16 to be accurate, it would have been confidential, yes.

17 THE COURT: And when he told you it was from someone
18 at the PCAOB, did you assume and believe that it was therefore
19 confidential?

20 THE DEFENDANT: Mr. Sweet told me that he didn't know
21 where it came from; he believed it came from someone at the
22 PCAOB and he didn't know who that was. I had my suspicions but
23 I didn't prompt him. If it turned out to be the actual list,
24 it would have been confidential.

25 (Pause)

Ja3dbrip

Plea

1 MS. ESTES: Your Honor, I don't think we think this is
2 sufficient right now. Maybe it makes sense to take a small
3 break.

4 MR. STERN: Actually, I think we can fix it.

5 THE COURT: OK.

6 (Pause)

7 THE DEFENDANT: Given that the information did prove
8 to be accurate, I understand that it was confidential
9 information.

10 THE COURT: Did you understand at the time that it was
11 confidential information?

12 THE DEFENDANT: I learned in 2016 that it was
13 confidential, so yes.

14 THE COURT: Confidential PCAOB information?

15 THE DEFENDANT: Confidential PCAOB information.

16 MS. ESTES: Your Honor, I think we need to know when
17 in 2016. Was it during the course of acting on the
18 information? Using the information?

19 THE COURT: Do you want to take a minute?

20 (Pause)

21 MR. BELL: Your Honor, may we?

22 THE COURT: Yes.

23 (Counsel conferred)

24 MS. GLAVIN: Your Honor, we are ready to proceed.

25 THE COURT: OK. Good.

Ja3dbrip

Plea

1 THE DEFENDANT: While I had my doubts when I first
2 learned of the information, I came to understand that it was
3 confidential information while using it in June of 2016.

4 THE COURT: While using it?

5 THE DEFENDANT: While using it.

6 THE COURT: And when you say "using it," am I correct
7 that you are talking about using it to go back to the
8 workpapers on those that you had thought would be inspected?

9 THE DEFENDANT: It was used to go back and review
10 those works earlier than that, but at this point I hadn't
11 reported it beyond what I had initially done. I didn't raise
12 it up further with --

13 THE COURT: So could you tell me, when did you come to
14 believe that it was confidential PCAOB information?

15 THE DEFENDANT: In June of 2016. That's when I
16 learned that the list was real, when we saw the inspections
17 coming in as matching up to what Brian had said they would.

18 MS. ESTES: Your Honor, I still don't think we're at a
19 point where this is sufficient. I would suggest a break where
20 we can discuss further.

21 MR. STERN: Your Honor, I'm not sure I understand the
22 concern any more, but if Ms. Estes would like to confer, I am
23 happy to do that.

24 MS. ESTES: Your Honor, from our perspective, there
25 was an agreement in March 2016, when the information was

Ja3dbrip

Plea

1 obtained, to use the information in connection with the
2 rereviews that took place in March and April of 2016. I think
3 a proper allocution will acknowledge that in March and April of
4 2016, Mr. Britt understood the information was confidential.
5 That was, of course, why they actually acted on it. Without
6 that, I think we have a problem.

7 MR. STERN: Your Honor, the Indictment charges an
8 ongoing conspiracy that spans years. And whatever Mr. Britt's
9 state of mind was in March of 2016, when he first learned of
10 the information, it is clear that at no time did anybody take
11 him to report the information to the PCAOB. The government
12 alleges that it was used to improve inspection results
13 throughout the 2016 inspection cycle, and if at any point
14 during -- we believe that if at any point during that time
15 Mr. Britt realized the information was in fact confidential
16 PCAOB information when he used it, or did not report it, that
17 is more than a sufficient allocution.

18 THE COURT: What was the timing of the inspection
19 cycle? Remind me.

20 MR. STERN: The inspection cycle began in roughly
21 April of '16 and went all the way through the end of 2016.

22 As your Honor -- as the Court may recall, the 2016
23 inspection reports were not even published until January of
24 this year.

25 THE COURT: So, I mean, what we're dealing with is

Ja3dbrip

Plea

1 what's the legal effect of a situation where he received
2 information from Brian Sweet about where the inspections were
3 going to be taking place and he didn't know one way or another
4 whether it was real or if it was just fanciful or, you know,
5 whatever, but he and others did take steps to review the
6 workpapers on those audits, which gives rise to a suspicion
7 that he thought it was really confidential information, I would
8 think, but he didn't really know until June, when the actual
9 inspections started lining up with the ones that they had been
10 given the heads up about.

11 MR. STERN: That is absolutely right, your Honor.

12 THE COURT: And the question is, is that within the
13 instructions I gave about the conspiracy to commit wire fraud?

14 MR. STERN: And we believe it is, your Honor.

15 MS. ESTES: Your Honor, if we could take a short
16 break?

17 THE COURT: Yes.

18 MS. ESTES: I think we would prefer to consult with
19 our Appeals Unit.

20 THE COURT: Why don't we take -- we will take ten
21 minutes.

22 (Recess)

23 MS. GLAVIN: Thank you, your Honor.

24 Mr. Britt has an additional factual statement.

25 THE COURT: OK. Mr. Britt.

Ja3dbrip

Plea

1 THE DEFENDANT: In January of 2017, Brian Sweet again
2 provided us with information that he said came from someone at
3 the PCAOB. This time he referred to it as a pre-ballot list of
4 clients to be inspected.

5 THE COURT: A pre?

6 THE DEFENDANT: A pre-ballot list.

7 THE COURT: Pre-ballot?

8 THE DEFENDANT: Ballot, yes. That is what I was
9 talking about.

10 I knew that this information was confidential PCAOB
11 information. Based on this information, I was instructed by
12 Tom Whittle to assign resources to provide assistance to the
13 audit team of a client on that list and I did so.

14 MS. ESTES: Your Honor, we just ask that your Honor
15 confirm with the defendant if he knew that the purpose of doing
16 so was to defraud the PCAOB.

17 MR. STERN: Your Honor, based on the instructions you
18 provided, it is pretty clear that Mr. Britt only needed to act
19 with a wrongful purpose, and I think he has allocuted more than
20 sufficiently to that.

21 THE COURT: Did you understand that the purpose of
22 using and taking action on that information in 2017 was to use
23 information that you knew was confidential and that the PCAOB
24 was not supposed to be using?

25 THE DEFENDANT: Yes, your Honor.

Ja3dbrip

Plea

1 THE COURT: OK. I'm not sure that defrauding the
2 PCAOB adds anything in terms of how I understand the legal
3 meaning of that.

4 MS. ESTES: I think that is fine, your Honor.

5 THE COURT: OK. Do you think that there is any more
6 inquiry necessary from the government?

7 MS. ESTES: Your Honor, I think that is sufficient
8 from our perspective.

9 THE COURT: OK. And, defense counsel, do you think
10 that there is a sufficient factual basis for the guilty plea?

11 MR. STERN: We do, your Honor.

12 THE COURT: OK. Let me just ask, I just want to be
13 sure on what, if any -- what waivers there are in the plea
14 agreement so that everyone is on the same page.

15 I mentioned what the waiver is with respect to a
16 sentence. What is the parties' understanding of any right to
17 appeal the conviction? Is there any right to appeal the
18 conviction?

19 MS. ESTES: No, your Honor.

20 And, your Honor, just to clarify, based on the
21 statements in the beginning, I know that Mr. Stern referenced
22 your Honor's rulings with respect to Middendorf and Wada after
23 their post-trial motions. We just would like to make clear
24 that if Mr. Britt had been at trial, he could have made
25 post-trial motions and preserved any of those issues, but, you

Ja3dbrip

Plea

1 know, from our perspective, since he is pleading guilty, he has
2 not -- he cannot preserve those sort of issues.

3 MR. STERN: We understand that Mr. Britt is waiving a
4 direct appeal of conviction.

5 THE COURT: Right. But your view is that if --
6 depending on what the Second Circuit says about the various
7 legal issues that Mr. Middendorf is waiving, you might have a
8 2255 argument; is that a possibility?

9 MR. STERN: We may move to vacate, your Honor.

10 THE COURT: You may move to vacate, OK.

11 And I'll have to decide what has been waived based on
12 the plea agreement, I gather, or someone may have to decide?

13 MR. STERN: Absolutely, your Honor.

14 THE COURT: Understood.

15 Is there anything else you all wanted to say about
16 that?

17 MS. ESTES: Not on the waiver point, your Honor. I
18 just -- back to the elements, I just wanted to make clear that
19 in connection with 2017, wires were used in connection with I
20 think the discussions with Mr. Whittle. There would have been
21 emails or phone calls. If the defendant could just confirm
22 that?

23 THE DEFENDANT: I made phone calls to organize the
24 resources.

25 THE COURT: You made phone calls?

Ja3dbrip

Plea

1 THE DEFENDANT: Phone calls, yes.

2 THE COURT: In connection --

3 THE DEFENDANT: In connection with this, yes.

4 THE COURT: With what you described in 2017 with using
5 the information along with Mr. Whittle?

6 THE DEFENDANT: Yes. Yes, your Honor.

7 THE COURT: Do you think that is sufficient?

8 MS. ESTES: Yes, your Honor.

9 THE COURT: OK. And does defense counsel think any
10 inquiry is appropriate or necessary?

11 MR. STERN: No, your Honor.

12 THE COURT: OK. All right.

13 Mr. Britt, since you acknowledge that you are in fact
14 guilty as charged in Count Two of the Indictment, and since I
15 am satisfied that you know your rights, including your right to
16 go to trial, and that you are aware of the consequences of your
17 plea, including the sentence which may be imposed, I find that
18 you are voluntarily pleading guilty, and I accept your guilty
19 plea and enter a judgment of guilty on Count Two to which you
20 have pleaded guilty.

21 Now, I will set a date for sentencing. Usually we set
22 sentencing about three-and-a-half months out to allow
23 sufficient time for the presentence report to be prepared. Is
24 that fine?

25 MR. STERN: If I may, your Honor?

Ja3dbrip

Plea

1 THE COURT: Sure.

2 MR. STERN: Given the hash consequences that may flow
3 to Mr. Britt incident to this plea, as I think your Honor just
4 became aware, Mr. Britt is not a U.S. citizen, and the
5 consequences of this are almost certain deportation. And as a
6 result of that, in an ideal world, I would be here asking you
7 to defer sentencing until after a Second Circuit ruling in
8 Mr. Middendorf's appeal. I realize that is extraordinary and I
9 am not going to ask for that.

10 That said, we do respectfully request that his
11 sentencing be set for ten months to a year because there are a
12 number of reasons that justify this result. As a starting
13 point, the result is permanent deportation and the 30-year life
14 in the United States that Mr. Britt and his wife are going to
15 have to undo. His wife currently has no citizenship in
16 Australia, not even legal residence, and there is a whole
17 process that they are going to have to figure out with respect
18 to that. They have college-aged children whose education and
19 future are going to have to be sorted out. There is real
20 property that is going to have to be disposed of in
21 Connecticut. And as the Court can imagine, one can't do that
22 in the winter without significant financial penalty and
23 hardship. There are likely to be tax consequences associated
24 with his retirement because the Australian tax system is
25 different than the U.S. tax system.

Ja3dbrip

Plea

1 And most importantly, as the Court is well aware,
2 Mr. Britt has had significant health issues and challenges.
3 And it is going to take some time to figure out, one, while he
4 is continuing to see doctors here, how he obtains health
5 coverage and insurance in Australia and how he transfers and
6 how he finds a physician in Australia that is capable of
7 providing him the kind of care that he is receiving that the
8 Court is aware of.

9 I think for all of those reasons it is going to take
10 quite a bit of time for him to transition and prepare for the
11 next phase of his life, and we would respectfully request that
12 sentencing be set ten months to a year out.

13 THE COURT: Counsel.

14 MS. ESTES: Your Honor, we'd object to that. We
15 wouldn't mind, for instance, a delay of five months, or
16 something like that, so that Mr. Britt can get his finances and
17 everything in order. But we believe a delay of ten months to a
18 year is simply an effort to wait out the Second Circuit, see if
19 there is something favorable, and then, you know, do what he
20 can to maybe withdraw his plea here.

21 So under those circumstances, your Honor, we think if
22 Mr. Britt wants the benefit of pleading guilty and accepting
23 responsibility, he needs to proceed to sentencing as a normal
24 defendant would.

25 THE COURT: Well, I think we can do something like six

Ja3dbrip

Plea

1 months, which will be a fair amount of time. The Second
2 Circuit, I don't know that ten months or twelve months is going
3 to be enough for the Circuit anyway, frankly. But I am fine
4 with six or seven months. So, why don't we look at that.

5 That puts us in April. Would April -- Friday,
6 April 17th, work?

7 (Pause)

8 MR. STERN: Your Honor, is there any way in which we
9 could put it off until May? Because the house -- Mr. Britt is
10 taking the lead in selling the Connecticut property, and we
11 realistically just don't see how that will be accomplished by
12 April. And depending upon the sentence of this Court, it could
13 impose an undue hardship on his wife to deal with matters that
14 he is better equipped to handle.

15 THE COURT: OK. How about May 8th, is that fine?

16 MR. STERN: Fine, your Honor.

17 THE COURT: Is that OK with the government?

18 MS. ESTES: Yes, your Honor.

19 THE COURT: OK. May 8th at 11 a.m. will be sentencing
20 here in this court. Written submissions on behalf of the
21 defendant will be due two weeks before that, which is
22 April 24th, and government submissions one week before, which
23 is May 1st. Sentencing May 8th, 11 a.m.

24 The present bond will be continued to the date of
25 sentence.

Ja3dbrip

Plea

1 So, Mr. Britt, please make sure you continue to comply
2 with all conditions for your pretrial release to the date of
3 sentencing, and you must be in the courtroom on the date and
4 time that I set for sentencing. It's a separate crime if you
5 don't show up for sentencing, of course.

6 And anything further?

7 MS. ESTES: No, your Honor.

8 MR. STERN: No, your Honor.

9 THE COURT: OK. Thank you. We are adjourned.

10 (Adjourned)